A

GHULAM NABI DAR AND OTHERS

v.

STATE OF JAMMU AND KASHMIR AND OTHERS

B

SUPREME COURT, INDIA
(2013) 3 SUPREME COURT CASES 280
ALTAMAS KABIR CJ
SS NIJJAR J
J CHELAMESWAR J

C

[CIVIL APPEALS NOS: 6-7 OF 2013†
WITH NOS. 8-9 OF 2013‡]
3 JANUARY 2013

D

ADMINISTRATIVE LAW: *Human and Civil Rights - Displaced Persons and Refugees - Evacuee property - Declaration of parcel of land as evacuee property - Applicability of principles of natural justice - Where notification issued by Custodian under s. 6 of J&K State Evacuees' (Administration of Property) Act, 2006 (6 of 2006 Smvt.) (1949 AD) declared parcel of land in possession of a person to be evacuee property*

E

vesting in Custodian, without affording him opportunity to show that he was not mere occupant of the property but tenant thereof and thus outside scope of Rr. 9 and 13-C of 2008 Rules - Held, such declaration stood vitiated for violation of principles of natural justice and administrative fair play - J&K State Evacuees' (Administration of Property) Act, 2006

F

(6 of 2006 Smvt.) (1949 AD) - Sections 6(1) & (2) and 16 - J&K State Evacuees' (Administration of Property) Rules, 2008 Smvt. (1951 AD) - Rr. 9 and 13-C - Administrative Law - Natural Justice - Fairness in Action/Wednesbury Principle - Fairness in action - Constitution of India, Art. 300-A

G

CIVIL PROCEDURE: *Civil Procedure Code, 1908 - Section 89 and Or. 23 R. 3 & Expln. - Settlement of dispute outside court - Validity on facts, and binding effect of settlement - Writ petitioner occupants of land challenging Custodian's order which had declared said land occupied*

H

by them to be evacuee property - Single Judge of High Court, by interim

---

† Arising out of SLPs (C) Nos. 11221-22 of 2008. From the Judgment and Order dated 25-3-2008 of the High Court of Jammu and Kashmir at Srinagar in CMPs Nos. 128 and 525 of 2006 in LPA No. 169 of 2004

I

‡ Arising out of SLPs (C) Nos. 14286-87 of 2008

order, restraining the parties from raising any construction on that land - Aggrieved thereby Custodian approaching Division Bench of High Court - During pendency of matters, parties reaching an out-of-court settlement in terms whereof occupants surrendered part of land to Custodian and remaining portion was to be settled with occupants - Parties filing said settlement duly signed by them to seek disposal of writ petition accordingly - Custodian thereafter raising construction on that land - Such settlement, in absence of allegation of settlement having been procured by fraud, held, lawful, within scope of Or. 23 R. 3 CPC and not hit by R. 13-C, J&K (AoP) Rules, 2008 - Hence, having been acted upon, it was binding on the parties and Custodian could not unilaterally withdraw from it - J&K State Evacuees' (Administration of Property) Act, 2006 (6 of 2006 Smvt.) (1949 AD) - Section 6 - J&K State Evacuees' (Administration of Property) Rules, 2008 Smvt. (1951 AD) - R. 13-C - Contract Act, 1872 - Sections 10, 14, 23 and 17 - Constitution of India - Arts. 300, 14 and 299 - Government Contracts/Tenders - Out-of-court Settlement - If properly entered into and valid

CIVIL PROCEDURE: *Practice and Procedure - Compromise before High Court - Submission of terms of settlement by both parties but during pendency thereof, seeking of unilateral withdrawal therefrom by one party after having acted thereupon - Not permissible - Civil Procedure Code, 1908, Or. 23 R. 3*

The dispute between the parties herein related to a certain piece of land. On 21-11-1980, the Custodian of Evacuee Property issued a Notification under Section 6 of the J&K State Evacuees' (Administration of Property) Act, 2006 (Smvt.) (the 2006 Act), declaring the said land to be evacuee property. Claiming themselves to be the tenants-at-will of a portion of the said land, the appellants herein filed a writ petition before the High Court challenging, *inter alia*, the validity of the said notification and the constitutionality of Section 6 of the 2006 Act. During the pendency of the writ petition, the Custodian started construction of a shopping complex, in violation of an order of injunction passed by the High Court. Therefore, the High Court, by another interim order, restrained the parties from raising any construction on the spot. Aggrieved thereby, the Custodian filed an LPA. While the matters were pending, the parties reached an out-of-court settlement. The settlement was duly signed by the Custodian, the writ petitioners and their counsel. The same was submitted before the High Court by way of a CMP for disposing of the LPA and the writ petition in terms thereof. However, on 10-10-2006, the Custodian filed a CMP to seek withdrawal of the

A settlement. Both the CMPs came up before a Division Bench. The two Judges comprising the Division Bench differed on the relief sought. While one of the Judges held that the settlement violated Rule 13-C of the J&K State Evacuees' (Administration of Property) Rules, 2008 Smvt. (the 2008 Rules) and could not, B therefore, be accepted, the other Judge held that Rule 13-C did not apply to the facts of the case and that it was nobody's case that the settlement was the outcome of fraud or unlawful. He further held that the settlement having been duly signed and acted upon by the parties, was binding on the parties and could not be C withdrawn unilaterally. The matter was then referred to a third Judge. The third Judge held that the parties had violated Rule 13-C and the Custodian was, therefore, competent to unilaterally withdraw from the settlement. On facts, he held that the settlement contravened Rule 13-C. Taking note of Order 23 D Rule 3 (including the Explanation to the said rule) CPC, the third Judge held that the settlement was directly hit by Section 23 of the Contract Act, and that, therefore, the Custodian was entitled to withdraw from the settlement unilaterally. The present two appeals against the said order of the third Judge were then filed E by special leave.

Allowing the appeals, the Supreme Court

Held:

F Protection to occupancy or tenancy right under Section 16 of the 2006 Act will be available only in respect of evacuee property after a determination to such effect is made. A unilateral declaration is clearly opposed to the principles of natural justice and administrative fair play and cannot be supported. The G Notification published on 21-11-1980, under Section 6 of the 2006 Act, declaring the lands under the possession of the appellants to be vested in the Custodian of Evacuee Property, stood vitiated, as the appellants had been denied an opportunity of explaining that they were not mere occupants of the property H in question, but tenants thereof, in which case, neither the provisions of Rule 9 nor Rule 13-C of the 2008 Rules would have any application to the facts of the present case. (paras 42 and 44)

I The settlement which was entered into between the writ petitioners and the State, was dependent on several factors, including the fact that the occupants of the lands in question had surrendered 22 kanals of prime land out of 37 kanals and 5 marlas

in favour of the Custodian Department while remaining in possession of 15 kanals and 5 marlas, which were to be settled with them. While on the one hand, the State Authorities took advantage of the settlement and constructions were raised on the surrendered lands, a stand was later taken on behalf of the State Government that the settlement stood vitiated on account of non-compliance with the provisions of Rule 13-C of the 2008 Rules. The fact situation of the present case is different from the circumstances contemplated under Rule 13-C of the 2008 Rules. In the present case, the lands covered by the settlement were not vacant and were not, therefore, within the ambit of Rule 13-C when the settlement was at the gestation stage. It is only under the settlement that the claims and rights, if any, of the writ petitioners were required to be surrendered. Therefore, in the facts of the present case, Rule 13-C of the 2008 Rules would have no application to the settlement arrived at between the parties and the same was not, therefore, vitiated for not putting the lands to auction to determine the premium to be paid for the leases to be granted in respect thereof. It was nobody's case that the settlement was the outcome of any fraud or was unlawful and the same, having been signed and acted upon, was binding on the parties and could not be withdrawn unilaterally. The settlement in question was lawful and within the scope of Order 23 Rule 3 CPC. (paras 45 to 48)

Black's Law Dictionary, cited

Human and Civil Rights - Displaced Persons and Refugees - J&K State Evacuees' (Administration of Property) Act, 2006 (6 of 2006 Smvt.) (1949 AD) - Section 6 - Constitutionality - Question left open for High Court to adjudicate upon

Advocates who appeared in this case:

For the appellants - Bhaskar Gupta and Zaffar Ahmad Shah, Senior Advocates (Ms Purnima Bhat, Advocate)

For the respondents - Sunil Fernandes, Ms Vernika Tomar, Ms Astha Sharma and Ms Insha Mir, Advocates

JUDGMENT

Altamas Kabir CJ:

[1] Leave granted. The disputes between the parties relate to lands measuring 37 kanals 5 marlas comprised in several survey numbers forming the subject-matter of OWP No. 480 of 2003 and

A OWP No. 454 of 2005. On 21-11-1980, the Custodian of Evacuee Property, Kashmir, issued a Notification under Section 6 of the Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006, hereinafter referred to as "the 2006 Act", declaring the aforesaid land to be evacuee property, being in the B ownership of one Qamar-ud-Din and other evacuees. Inasmuch as the writ petitioners in OWP No. 480 of 2003, claiming to be the tenants-at-will of the land involved in the writ petition, commenced earth filling, they were stopped from doing so by the Evacuee Department.

C

[2] It is the case of the writ petitioners that when they made inquiries, they were able to lay their hands on records indicating that the lands measuring 11 kanals 6 marlas out of the land comprised in the said survey numbers had been taken over by the D Evacuee Department and placed at the supurdnama of the Custodian *vide* three seizure memos dated 22-1-2003 and 1-2-2003. Claiming that they were in possession of the land in the capacity of tenants-at-will since before the aforesaid Act came to be enacted, the petitioner in OWP No. 480 of 2003 prayed for E the following reliefs:

(i) it be declared that Section 6 of the Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006 is unconstitutional;

F (ii) it be declared that Section 3 of the Agrarian Reforms Act, 1976 insofar as it excludes the application of Sections 4 and 8 of the tenants of evacuee land is *ultra vires* the Constitution;

(iii) that by an appropriate writ, direction or order including the G writ in the nature of *certiorari* the following notification/communication be quashed:

1. Notification dated 21-11-1980

2. Communication No. CEPS/GE/2002/2766-70 dated H 17-12-2002

3. Communication No. CG(EP)1020/2003/167-Misc. K dated 23-1-2003

4. Three seizure memos dated 2-2-2003

I

5. Communication No. CEPE-JE/2002/3347-50 dated 6-2-2003

6. Communication No. DFI/SG/378 dated 22-2-2003

(iv) that by an appropriate writ, direction or order including a writ in the nature of prohibition respondents be restrained from interfering in the rights of possession of the petitioners in the land and in their levelling of land and from fencing.

(v) ...

[3] Along with the writ petition, the petitioners also filed a miscellaneous petition seeking interim relief in which it was ordered that the respondents were not to dispossess the petitioners from the lands in dispute, till the next date. The petitioners were also restrained from raising any construction or changing the nature and character of the said lands during the said period. However, when during the pendency of the writ petition, the Custodian started construction of a shopping complex, in violation of the said order of injunction, the petitioners filed another CMP in which notice was issued on 22-4-2004, returnable within four weeks, and till then the parties were directed to maintain *status quo*.

[4] Subsequently, by an order dated 30-9-2004, the Registrar (Judicial) of the High Court was appointed as Commissioner to visit and submit a report which he did on 7-10-2004. On receipt of the report and on being satisfied that construction work had been undertaken by the Custodian on the aforesaid lands and was being proceeded with, the High Court by its order dated 19-11-2004, restrained the respondents from raising any construction on the spot. Since its earlier orders had been violated by the Custodian, the Station House Officer of the police station concerned was directed to see that the order of the Court was duly complied with, till the petition was considered for admission, or until further orders.

[5] Aggrieved by the aforesaid order of the learned Single Judge, the Custodian of Evacuee Property filed LPA No. 169 of 2004. Other writ petitioners, who also claimed to be in possession of their lands as tenants-at-will and as "protected tenants", have also challenged the validity of the provisions of Section 6 of the Jammu and Kashmir State Evacuees' (Administration of Property) Act, 2006 and Section 3 of the Agrarian Reforms Act, 1976, insofar as it excludes the application of Sections 4 and 8 to the tenants of evacuee properties.

[6] While the matters were pending, serious efforts were made by the parties for an out-of-court settlement which ultimately fructified in terms of a settlement which was submitted before the

A Court by way of CMP No. 128 of 2006. The settlement presented before the Court was duly signed by the Custodian of Evacuee Property, Kashmir and by all the writ petitioners and their counsel. While the above miscellaneous petition was pending consideration, the Advocate General filed an application on 23-5-
B 2006, praying that the settlement be not accepted, which application was later withdrawn. In the meantime, there was a change in the Government and the Custodian was also transferred. The new Custodian took a decision to refer the matter back to the State Government.

C

[7] On 10-10-2006, the Custodian filed an application praying for withdrawal of the settlement contained in CMP No. 128 of 2006, and in support of such application, the Custodian placed reliance upon a letter of the Revenue Department in which it was
D stated that the Revenue Minister had accorded approval for reversing the earlier decision taken on 27-3-2005/28-3-2005, for entering into a settlement with the occupants of the evacuee property. The said application for withdrawal of the settlement filed by the Custodian came to be registered as CMP No. 525 of
E 2006.

[8] The two miscellaneous petitions, being CMP No. 128 of 2006, filed by the parties for disposing of the appeal and writ petitions in terms of the compromise and CMP No. 525 of 2006,
F filed by the Custodian for withdrawal of the settlement, came up for consideration before the Division Bench of the Hon'ble Mr Justice H. Imtiaz Hussain and the Hon'ble Mr Justice Mansoor Ahmad Mir, on 15-9-2007. As indicated hereinbefore, the Hon'ble Judges differed on the relief prayed for.

G **[9]** While H. Imtiaz Hussain, J. held that the settlement violated Rule 13-C of the Jammu and Kashmir State Evacuees' (Administration of Property) Rules, 2008, hereinafter referred to as "the 2008 Rules" and could not, therefore, be accepted by the Court, Mansoor Ahmad Mir, J. held that the aforesaid Rule did
H not apply to the facts of the case and that it was nobody's case, that the settlement arrived at was the outcome of fraud or unlawful. His Lordship was also of the view that the settlement having been duly signed and acted upon by the parties, the same was binding on the parties and could not be withdrawn
I unilaterally. His Lordship, therefore, dismissed CMP No. 525 of 2006, filed by the Custodian for withdrawal of the settlement and directed the listing of LPA No. 169 of 2004 and CMP No. 128

of 2006, for further arguments. In view of such differences, the matter was referred to Hon'ble the Chief Justice in terms of Rule 36(2) of the Jammu and Kashmir High Court Rules, for referring the matter to a third Judge.

[10] The learned third Judge framed three questions for consideration, namely,

(a) whether Rule 13-C of the 2008 Rules is attracted to the settlement arrived at by the parties?

(b) whether the settlement contravenes Rule 13-C?

(c) whether the Custodian can withdraw from the settlement unilaterally?

[11] Before the learned third Judge it was sought to be urged on behalf of the State that the chunk of the land in question belonged to one Qamar-ud-Din who had two brothers, namely, Ahmad Din and Imam Din. In the disturbances of 1947, Qamar-ud-Din left the State and became an evacuee and his property was declared as evacuee property. In 1949 or 1950 there was no such record available in the Custodian Department. Subsequently, Ahmad Din submitted three applications dated 11th Assuj 2009, before the Custodian of Evacuee Properties with a request that three bungalows along with the premises be declared as non-evacuee property as the entire property was held by the three brothers, Qamar-ud-Din, Ahmad Din and Imam Din. The said three applications were dismissed on grounds of default on 28-7-1956.

[12] An application for review of the said order was filed on 20-11-1956, which was disposed of by the Custodian by his order dated 5-9-1963, whereby the close relatives of the evacuees were appointed as managers of the properties provided they gave an undertaking that they would submit yearly accounts of income and expenditure to the Department and deposit the income from the properties regularly so that the same could be credited against the names of the evacuees.

[13] It was, therefore, contended on behalf of the State that in terms of the above orders, the property came under the control of the Evacuee Department and was being administered through its allottees and managers appointed by it. It was also the stand of the State that once the Custodian came into control of the evacuee properties, he decided to construct a shopping mall over

A the land and allotted the work of construction to a contractor, who started raising the construction thereupon. It was also urged that notwithstanding the claim of the writ petitioners to be in possession of the lands as tenants, their rights, if any, in the land, were extinguished once the Evacuee Property Act came into effect
B and in any case by virtue of the declaration issued under Section 6 of the 2006 Act.

[14] It was also the case of the State that any allotment of lands belonging to the State could not have been settled without
C complying with the provisions of Rule 13-C of the 2008 Rules and such contravention invalidated the settlement which was, therefore, illegal and was rightly declared to be so by H. Imtiaz Hussain, J.

D **[15]** On the other hand, it was contended by Mr Shah, appearing for the writ petitioners, that the settlement between the parties was in the nature of a contract and had been arrived at by the parties who enjoyed the freedom to contract. It was also submitted by him that Rule 13-C could have applied if the land
E to be allotted was vacant. According to Mr Shah, since the writ petitioners were holding the land as tenants, it was not vacant for the purposes of Rule 13-C of the Rules. According to Mr Shah, the views expressed by the Hon'ble Justice Mansoor Ahmad Mir were in consonance with Rule 13-C, which in the facts of the case, could not have any application to the lands in question.
F

[16] It was also contended by Mr Shah that even assuming that Rule 13-C was applicable, even then there was no violation of its provisions as the premium was fixed in the present case by taking into consideration the fact that the writ petitioners were
G surrendering all their rights in respect of the whole land. The premium was fixed by the members of a committee headed by none else than the Minister in charge of the Custodian Department. Mr Shah also submitted before the learned third Judge that the rate of Rs 30 lakhs per kanal, as indicated by the
H appellants, was not based on any relevant material.

[17] As mentioned hereinbefore, the controversy in this case related to the applicability of Rule 13-C in regard to the land in question.

I **[18]** In his judgment and order dated 25-3-2008, the learned third Judge, Y.P. Nargotra, J. agreed with the view taken by H. Imtiaz Hussain, J. that the parties had violated Rule 13-C of

the abovementioned Rules and the Custodian was, therefore, competent to unilaterally withdraw the same. The learned Judge came to such a conclusion on the ground that in terms of the settlement arrived at, the writ petitioners would have to surrender all their rights over the entire land, which would render the land vacant within the meaning of Rule 13-C.

[19] On the question as to whether the settlement contravened Rule 13-C, the learned third Judge was of the view that the premium to be paid for the lease to be granted to the respondents/writ petitioners under the settlement had not been determined by putting the lease to an open auction which was in contravention of the mandatory requirement of Rule 13-C. The learned Judge, therefore, held that the settlement contravened Rule 13-C on the point of determining the premium payable.

[20] On the third question as to whether the Custodian could withdraw from the settlement unilaterally, the learned third Judge held that Rule 3 Order 23 CPC, which related to compromise of suits, would have application provided it was proved to the satisfaction of the court that the suit had been adjusted wholly or in part by any lawful agreement or compromise. In such case, the court would have the discretion to order such agreement or compromise to be recorded and shall pass a decree in accordance therewith insofar as it related to the parties to the suit. The learned third Judge took note of the Explanation to Rule 3 Order 23 CPC, which provides that an agreement or compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the Rule. Accordingly, in terms of the above Explanation, an agreement not found to be lawful, could be rejected by the court for the purpose of passing a decree.

[21] The learned third Judge then referred to Section 23 of the Contract Act, 1872, whereby any agreement which the court regards as immoral or opposed to public policy, is void. The learned third Judge held that the settlement was directly hit by Section 23 of the Contract Act as it defeated the object of Rule 13-C and was, therefore, unlawful for the purposes of Rule 3 Order 23 CPC. The learned third Judge held that the settlement being unlawful, the Custodian was entitled to withdraw from the settlement unilaterally. Agreeing with the views expressed by H. Imtiaz Hussain, J., the learned third Judge observed that by

consent or agreement, the parties cannot achieve what is contrary to law and that the settlement arrived at between the parties could not be accepted.

[22] As a result of the above, while the two miscellaneous petitions were disposed of by the High Court, LPA No. 169 of 2004 and OWP No. 480 of 2003, filed by the appellants challenging the Notification dated 21-11-1980, are still pending decision in the High Court. These two appeals arise from the final judgment and order dated 25-3-2008, passed by the learned third Judge of the Jammu and Kashmir High Court at Srinagar, in the said miscellaneous applications.

[23] Briefly stated, the grievance of the appellants is directed against the order passed by H. Imtiaz Hussain, J., holding that the settlement violated Rule 13-C of the 2008 Rules and could not, therefore, be accepted by the court.

[24] Appearing for the appellants, Mr Zaffar Ahmad Shah, learned Senior Counsel, reiterated the submissions made before the High Court and submitted that, although, the Evacuee Department issued the Notification dated 21-11-1980, the same was neither gazetted nor implemented till 1999, when an entry was made in the revenue records in that regard. Mr Shah urged that all the appellants were occupancy tenants in respect of the lands in which they were in possession and such possession was protected under Section 16 of the 2006 Act. The impugned order of the Custodian General, being contrary to the said provisions, was illegal and liable to be quashed.

[25] Mr Shah contended that the lands in question and the lands comprised in the surrounding areas were agricultural lands and had been utilised for cultivation of paddy for decades. There was a change in user of the surrounding lands, when a bypass road and a new airport was constructed. As a result of such developments and the expansion of the city, a large number of residential houses and commercial establishments came to be constructed in and around the area called Hyder Pora. On account of such unrestrained construction activities, the level of land used in construction work was raised considerably on account of earth filling. The lands of the appellants, on the other hand, continued to be low-lying and gradually became receptacles of water, making them unfit for cultivation. In order to render the lands usable, the appellants also resorted to earth filling to prevent collection and

stagnation of water. It is, at this stage, that the functionaries of the Evacuee Department intervened and stopped the appellants continuing with earth filling of the lands in question. A

[26] Mr Shah submitted that after purported *ex parte* enquiries were made by the Custodian General's Office, letters were issued to the Custodian of Evacuee Property directing him to resume possession of the lands under the occupation of the appellants. However, the appellants were kept completely in the dark regarding such enquiry and the procedure adopted by the Office of the Custodian General, in arriving at a final conclusion regarding the status of the land behind the back of the appellants, was without legal sanction and was liable to be quashed. B C

[27] Mr Shah urged that the appellants and their predecessors-in-interest had been holding and possessing the lands in question much before 14-8-1947, in their capacity as tenants and are, therefore, protected in law against any action of the respondents. Mr Shah urged that, although, the respondents claimed that the property in question belongs to one Qamer-ud-Din, he was never in possession of the lands as on 1-3-1947, or on 14-8-1947 and the predecessors-in-interest of the appellants were all along in occupation of the property as tenants and, at no stage, did they cease to occupy the said property. D E

[28] Mr Shah urged that under Section 5 of the 2006 Act, all evacuee property situated in the State would be deemed to have vested in the Custodian. However, in order to vest in the Custodian, the properties had to be evacuee property. Mr Shah submitted that in the instant case, Qamer-ud-Din was not an evacuee within the meaning of Section 2(c) of the above Act, nor did he acquire the property in the manner indicated in Section 2(c)(iii) thereof. Mr Shah submitted that the property has not been registered as evacuee property by the Custodian, in terms of Section 5 of the 2006 Act. F G

[29] The learned counsel then submitted that Section 6 of the 2006 Act was unconstitutional and was liable to be struck down. It was urged that before issuing a notification under Section 6 of the 2006 Act, it was only incumbent upon the authorities to ensure that the principles of natural justice were followed. H I

A **[30]** Mr Shah contended that the 2008 Rules provide that in respect of any evacuee property which vests in the Custodian, but is in the possession of some other person having no lawful title to such possession, the Custodian may evict the person from such property in the manner indicated in the 2006 Act and the 2008 B Rules.

[31] Mr Bhaskar Gupta, learned Senior Advocate, who appeared for the appellants, Ghulam Mohammad Dar and others, emphasised the use of the expression "vacant" in Rule 13-C of C the 2008 Rules. Mr Gupta submitted that the expression "vacant" has been defined in *Black's Law Dictionary* to mean "empty, unoccupied, absolutely free, and unclaimed". Accordingly, land in possession of any person prior to coming into force of the Act and the Rules, could not be said to be vacant land and, D accordingly, Rule 13-C of the 2008 Rules would have no application to the lands in question at all.

[32] Mr Gupta submitted that in terms of the settlement which has been arrived at between the appellants and the State agencies, the appellants had surrendered possession of 22 kanals E of prime land out of 37 kanals and 5 marlas in favour of the Custodian Department and the appellants continued to be in possession of the remaining lands. Furthermore, according to Mr Gupta, by the raising of constructions on the surrendered land, the settlement had been duly acted upon and the State F could not, therefore, now resile therefrom. It was no longer open for the State to contend that they had wrongly arrived at the settlement.

[33] Mr Gupta also pointed out that the fact that the appellants G were and continued to be in possession of the lands in question, would be evident also from a Letter written on behalf of the State Government, in its Revenue Department, to the Custodian General on 10-10-2006 regarding the settlement to be filed in LPA No. 169 of 2004 and OWP No. 480 of 2003. It was pointed H out that, in the said Letter, the State Government had acknowledged the fact that the appellants were the occupants of the property in question, even though such occupation was referred to as illegal. Mr Gupta submitted that what was important was the acknowledgment of the fact that the appellants were in I actual possession of the lands in question.

[34] It was lastly submitted by Mr Gupta that Rule 3 Order 23 CPC permits compromise of suits and where it is proved to the satisfaction of the court that the same had been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement, compromise or satisfaction to be recorded and then proceed to pass a decree.

[35] Mr Sunil Fernandes, learned counsel, who appeared for the State of Jammu and Kashmir, submitted that the two writ petitions regarding resumption of possession of the lands in question were still pending before the High Court and the validity of Section 6 of the 2006 Act was the subject-matter of challenge therein. The ambit of the dispute between the parties before the High Court was confined to the question of validity of Section 6 of the 2006 Act, as also the challenge to the settlement arrived at between the parties.

[36] Mr Fernandes urged that the view of the learned third Judge represented the majority view in the matter, which did not warrant any interference. These appeals were, therefore, liable to be dismissed.

[37] The main plank of the submissions made on behalf of the appellants is that the lands in question are not evacuee property, and, that, the appellants were tenants thereof since before the Act came into force. In fact, it is the case of some of the appellants that their predecessors-in-interest were in occupation of the lands in question even prior to 1-3-1947, and 14-8-1947, which clearly excluded the appellants from the operation of the provisions of the 2006 Act and the 2008 Rules. On the other hand, as "protected tenants", the appellants were entitled to continue in possession of the lands and, particularly so, in view of the settlement arrived at between the appellants and the State Authorities.

[38] That, there was a settlement arrived at between the parties is not in issue. It is also not in issue that after filing the settlement in court and asking the court to take action thereupon, an application was made on behalf of the Custodian of Evacuee Property, Jammu and Kashmir, for leave to withdraw CMP No. 128 of 2006 on the ground that the Chief Minister had reversed the earlier decision taken on 27-3-2005/28-3-2005 and, that, accordingly, the deponent, in the affidavit, was not competent to enter into the settlement, as the decision to do so had been withdrawn by the competent authority.

A **[39]** The question to be decided is whether having entered into a settlement, which stood concluded and had been acted upon by the State Government by raising constructions on the surrendered lands, could the settlement have been withdrawn unilaterally only at the instance of the State Government?

B **[40]** The other branch of submissions made on behalf of the appellants, which merits consideration, is whether on Section 8 of the 2006 Act having been declared *ultra vires*, a party could be left without a remedy as the right to challenge a notification issued C under Section 6 stood extinguished by such declaration?

[41] In addition to the above, the provisions of Section 16 of the 2006 Act may also be noticed. Section 16, which deals with occupancy and tenancy rights provides as follows:

D > **16. Occupancy or tenancy right not to be extinguished.** Notwithstanding anything contained in any other law for the time being in force, the right of occupancy in any land of an evacuee which has vested in the Custodian shall not be extinguished, nor shall an evacuee or the Custodian, whether as an occupancy E tenant, or a tenant for a fixed term of any land, be liable to be ejected or deemed to have become so liable on any ground whatsoever for any default of the Custodian.

[42] It is clear from Section 16 that on account of the *non obstante* clause, the provisions of Section 16 will prevail over any F other law for the time being in force and the right of occupancy in any land of an evacuee shall not be extinguished. Accordingly, in the event the tenants were enjoying occupancy rights in respect of the lands in their possession, they could not be evicted therefrom by virtue of the notification published under Section 6 G of the 2006 Act. However, the protection under Section 16 will be available only in respect of evacuee property after a determination to such effect is made. A unilateral declaration is clearly opposed to the principles of natural justice and administrative fair play and cannot be supported.

H **[43]** As far as the second limb of Mr Shah and Mr Gupta's submissions is concerned, the same being the subject-matter of the writ proceedings pending before the High Court, it would not be proper on our part to express any opinion in respect thereof.

I **[44]** Having considered the submissions made on behalf of the respective parties, we are inclined to accept the submission made on behalf of the appellants that the Notification published on

21-11-1980, under Section 6 of the 2006 Act, declaring the lands under the possession of the appellants to be vested in the Custodian of Evacuee Property, stood vitiated, as the appellants had been denied an opportunity of explaining that they were not mere occupants of the property in question, but tenants thereof, in which case, neither the provisions of Rule 9 nor Rule 13-C of the 2008 Rules would have any application to the facts of this case.

[45] Apart from the above, the settlement which was entered into between the writ petitioners and the State, was dependent on several factors, including the fact that the occupants of the lands in question had surrendered 22 kanals of prime land out of 37 kanals and 5 marlas in favour of the Custodian Department while remaining in possession of 15 kanals and 5 marlas, which were to be settled with them. While, on the one hand, the State Authorities took advantage of the settlement and constructions were raised on the surrendered lands, a stand was later taken on behalf of the State Government that the settlement stood vitiated on account of non-compliance with the provisions of Rule 13-C of the 2008 Rules. The fact situation of this case is different from the circumstances contemplated under Rule 13-C of the 2008 Rules. In the present case, the lands covered by the settlement were not vacant and were not, therefore, within the ambit of Rule 13-C when the settlement was at the gestation stage. It is only under the settlement that the claims and rights, if any, of the writ petitioners were required to be surrendered and, therefore, the question of actual surrender of possession of 22 kanals of land out of 37 kanals and 5 marlas, was to follow, leaving a balance of 15 kanals and 5 marlas to be allotted to the occupancy rights and tenants-at-will in respect thereof.

[46] The special facts of the case set the present agreement/ settlement apart from the cases of grant of lease of vacant lands in terms of Rule 13-C and has, therefore, to be treated differently. Firstly, as the lands were not vacant, the very first criterion of Rule 13-C, was not satisfied and the lease of the lands were to be granted as part of the settlement packet, which included surrender of 22 kanals of prime land. We are inclined to agree with the views expressed by Mansoor Ahmad Mir, J. that in the special facts of this case, Rule 13-C of the 2008 Rules would have no application to the settlement arrived at between the parties and the same was not, therefore, vitiated for not putting the lands to auction to determine the premium to be paid for the leases to be

granted in respect thereof. As observed by His Lordship, it was nobody's case that the settlement was the outcome of any fraud or was unlawful and the same, having been signed and acted upon, was binding on the parties and could not be withdrawn unilaterally.

[47] In our view, the settlement arrived at between the parties and filed before the High Court for acceptance by way of CMP No. 128 of 2006 is lawful and within the scope of Rule 3 Order 23 of the Code of Civil Procedure. The decision holding the settlement to be contrary to the provisions of Rule 13-C of the 2008 Rules, as held by H. Imtiyaz Hussain, J. on 15-9-2007, and affirmed by the third learned Judge, Y.P. Nargotra, J. by his judgment and order dated 25-3-2008, cannot be sustained and is set aside.

[48] Consequently, the view expressed by Mansoor Ahmad Mir, J. is upheld. CMP No. 525 of 2006 is, accordingly, dismissed and CMP No. 128 of 2006 is allowed. The High Court shall proceed to pass appropriate orders for acceptance of the out-of-court settlement and for adjustment of the rights of the parties in terms thereof in the LPA as well as in OWP No. 480 of 2003 and OWP No. 454 of 2005.

[49] Since, in these appeals we have only been called upon to consider as to whether the settlement arrived at between the parties stood vitiated on account of non-compliance with the provisions of Rule 13-C of the 2008 Rules, we have not expressed any opinion with regard to the second limb of the submissions advanced regarding the constitutionality of Section 6 of the 2006 Act. The said issue is, accordingly, left to the High Court for decision. We make it clear that whatever has been expressed in this judgment, shall not in any way prejudice and/or affect the outcome of the decision of the High Court in the said matter.

[50] The appeals are, accordingly, disposed of. There will, however, be no order as to costs.